



Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE:

“Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond”

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan’s Office

CONFERENCE CALL LINE: (b) (6)

PREPARED BY: Chris Zell and Leah Brown

DATE: 11/7/2017

INVITED EPA ATTENDEES: Region 10: Dan Opalski; Dave Croxton; Leah Brown; Jennifer Byrne; Laurie Mann; Cara Steiner-Riley; Chris Zell. Headquarters: Jim Havard; Holly Arrigoni; Jim Curtin; Chris Lewicki.

I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

II. TIMING

On August 23, 2017, NWEA provided a Notice of Intent (NOI) to sue EPA under the Clean Water Act (CWA) for failure to perform the mandatory duty of approving or disapproving the Deschutes River TMDL within the statutorily mandated 30-day timeframe. NWEA may initiate litigation at any time. NWEA indicated in conversations with EPA and Ecology on October 13, 2017, that it intends to file suit soon.

III. PURPOSE

- Summarize the Deschutes River TMDL and administrative history
- Share outcomes from informal conversations with Ecology and NWEA following receipt of the NOI

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- Meeting outcomes include Regional agreement on recommended path forward and identification of additional briefings to confirm recommendation with Headquarters

IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi²) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. During early stages of TMDL

development (~2005-2014), Ecology initially planned to submit a TMDL addressing impairments in both freshwater (Deschutes) and marine (Budd Inlet) water quality limited segments. (b) (5)

Ecology decided to split the TMDL into freshwater and marine segments. Ecology submitted the freshwater (Phase 1) Deschutes TMDL to EPA for approval on December 17, 2015. (b) (5)

The 2015 TMDL submittal included a request for EPA to approve allocations for 73 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform [bacteria], and fine sediment). Beginning in February 2016, EPA and Ecology have discussed opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). (b) (5)

Ecology chose to send another submittal letter concerning the Deschutes TMDL on July 17, 2017, asking EPA “to focus” on a subset of TMDLs for bacteria, temperature, and fine sediment (n = 46). The 2017 letter states that Ecology will revisit the Deschutes River TMDL for necessary parameters in 2030 if actions included in its implementation plan (e.g., development of full mature riparian vegetation) are not met by then. In addition, the 2017 letter included two augmentations to the bacteria and water temperature TMDLs intended to remedy some acknowledged deficiencies in the original submission. These augmentations include: (1) an equation to calculate a numeric daily loading value for temperature (allowable stormwater discharge); and (2) including a table expressing bacteria allocation in daily units. (b) (5) ACP

Deschutes (WA) TMDL Key Dates

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Dates	Event
2004	Sampling Plan Completed
2003 - 2007	Monitoring
2007 - 2014	TMDL Development
April 2014	Announcement to Submit Freshwater Components Only
December 2015	Ecology Submitted TMDL to EPA
February - October 2016	EPA Concerns Shared with Ecology
June 2016	Ecology Hosted Squaxin Island Tribe – Tribal Coordination Meeting
August 2016	EPA/Ecology Discussion with NWEA in Portland, OR
(b) (5)	(b) (5)
January 2017	EPA Received Puget Sound FOIA from NWEA
March 2017	EPA Developed Bacteria TMDLs
June 2017	EPA & Ecology Negotiate “Resubmit” Letter
July 2017	EPA Received 2 nd Submittal Letter from Ecology
(b) (5)	(b) (5)
August 2017	EPA Received Deschutes NOI from NWEA
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October 13, 2017	EPA Region 10 Discussion with NWEA, re: NOI

V. KEY ISSUES

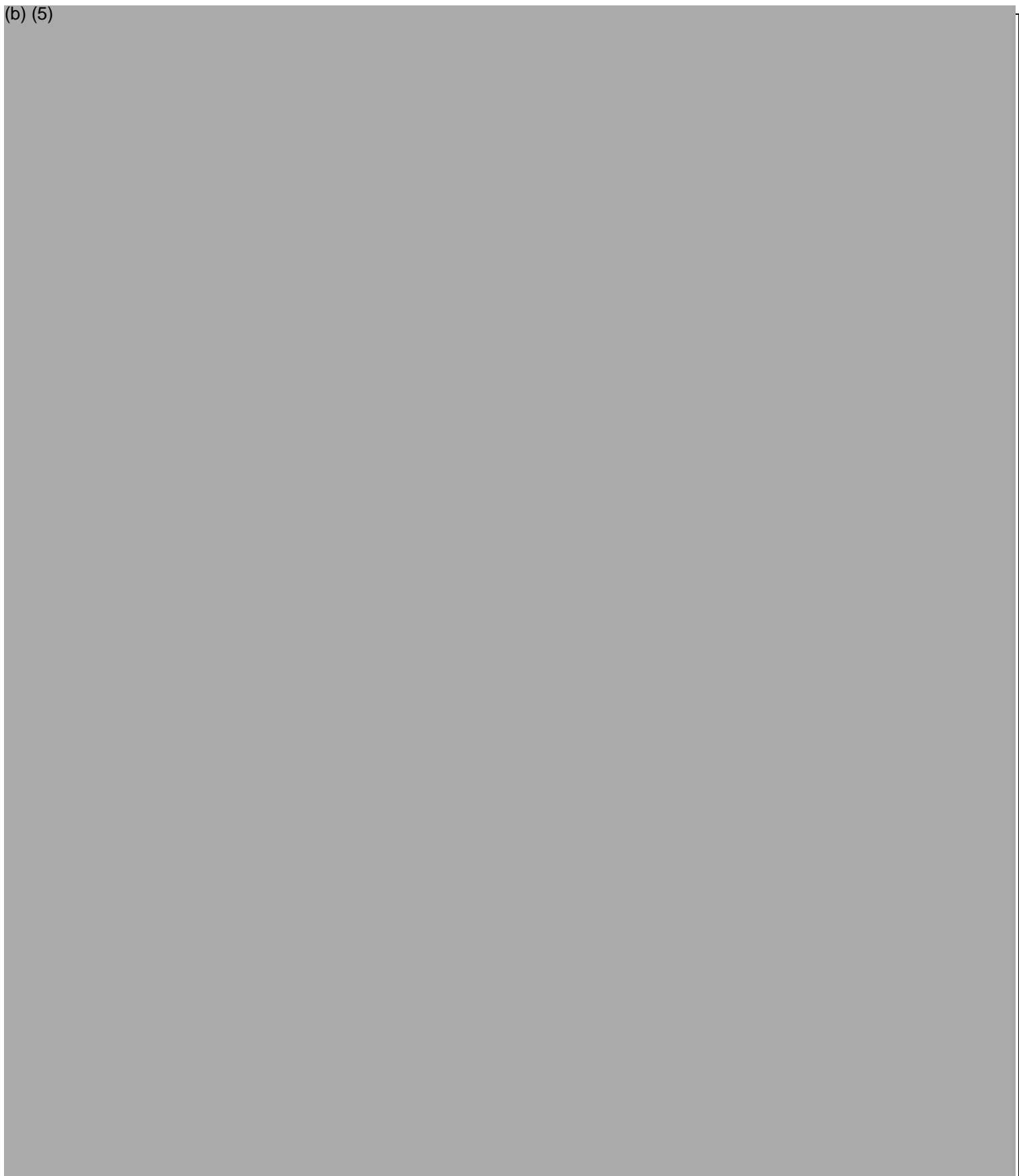
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- NWEA submitted a mandatory duty NOI on August 23, 2017.
- A conversation with NWEA on October 13, 2017, indicates the July 2017 resubmittal letter will not deter litigation.

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VI. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to “either approve or disapprove [a TMDL] not later than thirty days after the date of submission.” If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval. (b) (5)



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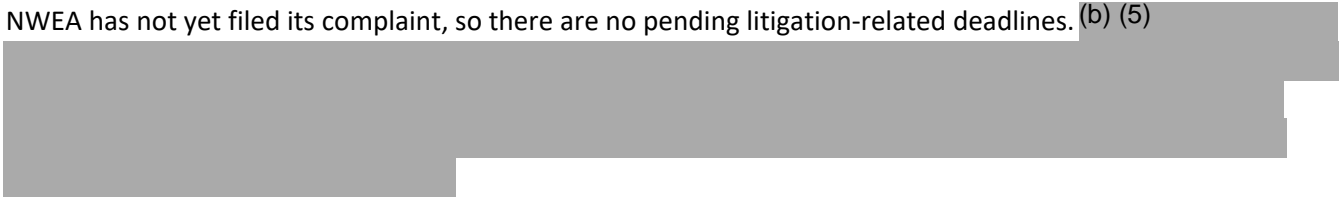
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IX. NEXT STEPS / UPCOMING DEADLINES

NWEA has not yet filed its complaint, so there are no pending litigation-related deadlines. (b) (5)





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